SMALL BUSINESS TAX FAIRNESS ACT SHOULD BE SIGNED INTO LAW

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, I rise today to talk about the American dream. Of course, the American dream is different for everybody, but for a significant number of Americans, the American dream means starting up a small business, helping it to grow, and then passing on that business to their children.

Unfortunately, our Federal Government punishes these people who want to pass their life's work on to their children. Approximately 70 percent of family-owned businesses are not passed on to the next generation. Mr. Speaker, 87 percent do not make it to the third generation.

This is no surprise when we factor in the death tax. The death tax forces families to pay taxes of up to 55 percent on the value of a deceased family Member's estate, making it virtually impossible for a small business owner or family farmer to pass that on to their family. This is wrong.

The House has passed the Small Business Tax Fairness Act which will deliver some relief from the death tax. I hope the President will sign it and help more families live out the American dream.

CENSUS BUREAU SHOULD CONSULT READER'S DIGEST

(Mr. KINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KINGSTON. Mr. Speaker, now, we have to love that government crowd down at the Census Bureau. I mean they are so typical government. We remember this crowd. They are the ones who did not want to bother counting the people just because that strange document called the Constitution requires a head-by-head count. What they wanted to do was sample.

Now, they showed us their efficiency last week; go home and check your mail if you do not believe me. They sent out 120 million forms to the wrong address. Check it. Every address had an extracurricular ''1'' in it.

Well, it still got through because the Post Office, being another governmental agency, knows how to think like a governmental agency so they figured out what the Census Bureau was really trying to do. But then they put all of the instructions on the back in every language under the sun. Well, not quite, but in 40 languages, they just overlooked English.

No problem, I know a lot of people are against English first in America, and apparently the census is too. But in it they did not put instructions in English. They have an enclosed envelope. I do not know what to do with the envelope, so I looked for the toll free number. The toll free number is not on the form.

So I just would ask the people at the Census Bureau, call the folks at Reader's Digest Sweepstakes. They will show you how to do a mailer, they will show you how to get responses and maybe we can get this thing done. But remember, they are the ones who are responsible for counting us. Does that not scare you?

ANNOUNCEMENT OF AMENDMENT PROCESS FOR THE BUDGET RESOLUTION FOR FISCAL YEAR 2001

Ms. PRYCE of Ohio. Mr. Speaker, the Committee on Rules is planning to meet the week of March 20 to grant a rule which will outline the amendment process for floor consideration of the budget resolution for fiscal year 2001.

The Committee on the Budget ordered the budget resolution on March 15 and is expected to file its committee report early next week.

Any Member wishing to offer an amendment should submit 55 copies and a brief explanation of the amendment to the Committee on Rules in room H–312 of the Capitol by 4 o'clock p.m. on Tuesday, March 21. As in recent years, the Committee on Rules intends to look more favorably toward amendments offered as complete substitutes.

Members should also use the Office of Legislative Counsel and the Congressional Budget Office to ensure that their substitute amendments are properly drafted and scored and should check with the Office of the Parliamentarian to be certain their substitute amendments comply with the Rules of the House.

ANNOUNCEMENT OF AMENDMENT PROCESS FOR H.R. 3822, OIL PRICE REDUCTION ACT OF 2000

Ms. PRYCE of Ohio. Mr. Speaker, I would like to make an announcement.

Today, a ''Dear Colleague'' letter will be sent to all Members informing them that the Committee on Rules is planning to meet next week to grant a rule for the consideration of H.R. 3822, the Oil Price Reduction Act of the Year 2000.

The Committee on Rules may grant a rule which would require the amendments be preprinted in the CONGRESSIONAL RECORD. In this case, amendments must be preprinted prior to their consideration on the floor.

Amendments should be drafted to the version of the bill reported by the Committee on International Relations.

Members should use the Office of Legislative Counsel to ensure that their amendments are properly drafted and should check with the Office of the Parliamentarian to be certain their amendments comply with the rules.

PROVIDING FOR CONSIDERATION OF H.R. 2372, PRIVATE PROPERTY RIGHTS IMPLEMENTATION ACT OF 2000

Ms. PRYCE of Ohio. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 441 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 441

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 2372) to simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final actions of Federal agencies, or other government officials or entities acting under color of State law; to prevent Federal courts from abstaining from exercising Federal jurisdiction in actions where no State law claim is alleged; to permit certification of unsettled State law questions that are essential to resolving Federal claims arising under the Constitution; and to clarify when government action is sufficiently final to ripen certain Federal claims arising under the Constitution. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill. The committee amendment in the nature of a substitute shall be considered as read. No amendment to the committee amendment in the nature of a substitute shall be in order except those printed in the report of the Committee on Rules accompanying this resolution. Each amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against the amendments printed in the report are waived. The Chairman of the Committee of the Whole may: (1) postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment; and (2) reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be 15 minutes. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted.

Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. MILLER of Florida). The gentlewoman from Ohio (Ms. PRYCE) is recognized for 1 hour.

Ms. PRYCE of Ohio. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. FROST), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 441 is a fair rule that provides for the consideration of the key issues surrounding H.R. 2372, the Private Property Rights Implementation Act of 2000. The rule provides for an hour of general debate, after which the House will have the opportunity to debate two Democrat amendments and a bipartisan substitute.

Adequate time will be allowed to fully debate the merits of each amendment, with an hour of debate time provided for the bipartisan substitute. In addition, the minority will have the opportunity to offer a motion to recommit with or without instructions.

Mr. Speaker, today, with the adoption of this rule, the House will have the opportunity to open the Federal courthouse doors to America's private property owners who are clamoring outside, hoping to gain entrance to exercise their constitutional rights.

At one time in our Nation's history, the property rights of individuals were sacred. In our Constitution, the founding fathers provided that no person shall be denied of life, liberty or property without due process, nor shall private property be taken for public use without just compensation.

But increasingly, local, State, and Federal governments have overlooked the Constitution and placed more and more restrictions on land use in a manner that ignores, rather than protects, the interests of those who own the land. In these situations, it is only right that landowners have a fair opportunity to challenge the decisions of governmental bodies that affect their constitutional rights in court. But instead, their access to justice is routinely denied through procedural hurdles that prevent the resolution of their ''takings'' claims.

In fact, over the past decade, less than 20 percent of takings claims raised in the U.S. district court had the merits of their cases heard, and for those who chose to spend time and money to appeal their case, only about 36 percent had their appeals heard on the merits. For the few lucky property owners whose appellate cases were found to be ''ripe'' and the merits reached, the journey to an appellate court determination took them an average of 9½ years to navigate.

These numbers do not even take into account the many low-income or middle-class property owners who are too intimidated by the process and costs involved to venture down this road in the first place.

There are two major obstacles in the path of property owners who wish to vindicate their constitutional rights in Federal court. First, property owners must demonstrate that the government entity which has ''taken'' their property through an administrative action or regulation has reached a final decision regarding how the property may be used. Now, it is not hard for local governments to take advantage of takings law by repeatedly delaying their final decision on land use, putting property owners in a perpetual holding pattern and keeping them out of Federal court. In these situations, the merits of the cases are never heard.

Mr. Speaker, H.R. 2372 lowers this obstacle by clarifying when a final decision has been made, so that property owners can move on to the next step in resolving their claims.

□ 1045

Under current law, private property owners also must show they have sought compensation through the procedures the State has provided.

Why should we require that a State court complete its considerations of questions of Federal constitutional law before a Federal court can take action? This runs counter to the Supreme Court's refusal to require exhaustion of State judicial or administrative remedies in other Federal claims, since it is the paramount role of Federal courts to protect constitutional rights.

Further, the time, energy, and money that it takes to exhaust administrative remedies, pursue a case in State court, refile in Federal court, and fight a government entity with deep pockets, present hurdles that are far too high for the average property owner to ever clear.

H.R. 2372 will allow more takings cases to reach the merits in Federal courts by removing the requirement that property owners litigate their Federal takings claims in State court first.

While H.R. 2372 gives hope of swifter justice to many property owners, there are several things it will not do. It will not alter the substantive law of takings under the fifth amendment. It will not prevent local governments from enacting regulations to protect the environment or health and safety of its citizens within the bounds of the Constitution, and it will not reduce the heavy burden of proof faced by property owners in takings cases in the first place.

Still, there are concerns about these issues, particularly regarding this legislation's effect on local zoning processes. I am pleased to inform my colleagues that under this fair rule, an hour of debate on the Boehlert-Delahunt substitute will allow the House to fully consider this issue.

While this bill is not without controversy, this rule is fair in its treatment of the minority, as well as in its provision for ample debate of the issues at hand.

Mr. Speaker, I encourage my colleagues to support this rule, and I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 2372, the Private Property Rights Implementation Act of 2000.

H.R. 2372 grants landowners across the country great access to Federal courts in local land use cases involving the takings clause of the fifth amendment.

This bill enjoys bipartisan support and is substantially similar to a bill passed by the House in the 105th Congress by a vote of 248 to 178.

H.R. 2372 is a procedural bill which clarifies how the Federal courts should deal with takings cases, and seeks to bring relief to property owners who today can spend an average of 10 years jumping through the administrative and judicial hurdles which currently prevent them from seeking remedy in Federal courts in order to be able to use their property.

Property owners surely deserve the right to a speedy judicial determination of a takings case, and this legislation seeks to provide that determination to them.

This rule allows for the consideration of a substitute to be offered by the gentleman from New York (Mr. BOEHLERT). The Boehlert substitute would eliminate local land use actions from the cases that would receive the expedited Federal court consideration provided in the bill. The Boehlert substitute is identical to the substitute offered in the last Congress, and would, as it did previously, leave intact accelerated access to Federal courts, Federal takings cases.

The rule also makes in order an amendment to be offered by the Committee on the Judiciary ranking member, the gentleman from Michigan (Mr. CONYERS), and the gentleman from North Carolina (Mr. WATTS).

The Conyers-Watts amendment seeks to ensure the uniformity in litigation of all constitutional claims, including those claims involving the uses of property. I urge adoption of the rule and the bill.

Mr. Speaker, I yield 5 minutes to the gentleman from Minnesota (Mr. VENTO).

Mr. VENTO. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in opposition to this bill. The rule, I think, is obviously structured to limit and provide for some orderly consideration. I assume that they have tried to accommodate some of the many amendments that might be offered to this important bill.

This bill has been before us in the past, in the 104th and 105th Congress. Here it is again. It has gone to the Senate. It is unable to muster the votes there, obviously, to receive consideration on the Senate floor.

Frankly, this is a bad bill. Yesterday's Washington Post talked about the property rights and wrongs, and pointed out that this bill is moving in the wrong direction. It tends to take away from local governments the prerogatives and responsibilities they have for local zoning and for land use restrictions, which, as the Washington Post editorial points out, Mr. Speaker, is the quintessential or one of the quintessential roles of local and State governments.

Just look at the article yesterday in Congress Daily, or pardon me, Tuesday in Congress Daily, in which the advocates of this, the interest groups that are in favor of this, are speaking out as to what this bill does.

It says, ''This bill will be a hammer to the head of these State and local bureaucracies.'' That is what this is. That is why this bill has earned the opposition from almost all the local entities, from the counties, from the townships, from the municipalities, from the States, because it fundamentally undercuts the procedures and processes that each of our States have put in place to try to resolve land use questions and zoning disputes.

Any of us that have served in local government or for that matter in the national government for very long in terms of the public policy process well understands that these decisions are not easy decisions.

Today, in essence, we expect local and State governments to make more and more decisions with regard to these land use issues, and to say the least, Mr. Speaker, they end up being controversial. We are telling developers where we might have commercial properties, industrial properties, where we want watersheds protected.

In essence, we have to take the information that we have with regard to these environmental questions and translate them into public policy. It is not easy. A lot of people are in a state of denial about what the consequences of their actions are in filling in swamps, filling in wetlands, dredging wetlands. These are the questions, the important issues that prevail with regard to this.

This bill would have us just steamroller over all of these particular processes, take a decision that might be made to deny or to grant a permit, and move that directly into the Federal courts to vastly increase the jurisdiction of the Federal courts in these cases, bypassing whatever local processes, whatever appeal processes, whatever expertise has been built up within the States or the State courts; steamrollering over that and in fact superimposing the Federal courts, to vastly increase the jurisdiction of the Federal courts in these decisions. We basically would have the Federal courts deciding and articulating zoning decisions at the local level.

Now, we have increased the jurisdiction of the Federal courts a lot. Whether or not we should do this now, no one is arguing that if there is a takings case that we should not follow the rules, the governance that has been developed over hundreds of years, basically, in terms of establishing that.

The proponents of this, of course, have as their goal to undercut and change the takings to vastly increase the compensation that is provided to circumvent, as it were, the Constitution and the constitutional prerogatives, to circumvent the local and State governments. That is what is at the core of this. As I say, and I use the words of the advocates of this, ''This bill will be a hammer to the head of those State and local bureaucracies.'' That is what this is, to beat up and State and local governments.

I suggest that in this Congress we have looked to provide more authority and responsibility to State and local governments. We cannot take away the tools they need to do the job. That is what this does, is to say you have responsibility, but we are taking away the tools that you have today. We are reducing what you have today to deal with that.

Mr. Speaker, I rise in opposition to H.R. 2372, the Private Property Rights Implementation Act.

I am surprised that this legislation, which militates against the devolution of authority to state and local governments, has been championed as a constitutional prerogative. In addition to its adverse safety, health and environmental impacts, this bill would have the effect of elevating property rights over other constitutional rights, while violating the principles of local sovereignty and federalism.

More specifically, H.R. 2372 would undermine local land-use authority by allowing property owners to bypass local zoning appeals boards and state courts. Such preemption of local governmental authority could jeopardize local public health and land protections as well as other environmental safeguards. Instead, we should reinforce and strengthen the tools and authority for communities who choose to protect open space and control sprawl.

Moreover, this legislation would essentially create an exclusive process of resolution dispute for powerful special interests that did not want to adhere to the locally-elected decision-making authority. These special interests could simply use this process to force local communities to accept inappropriate development plans. Ultimately, this bill would empower a few at the expense of many, and democratic participation in land-use decisions would be markedly diminished, as the federal courts would become the guiding authority for local zoning.

Mr. Speaker, there is no question that private property is a fundamental component of the American experience. However, the Framers also realized that there would be circumstances where private property interests should be subordinate to the public welfare. Local governance and resolution against a backdrop of constitutional protection is necessary and has been in place for over 200 years.

It would be a serious mistake for this Congress to limit the jurisdictional authority of small counties, towns and cities. I urge my colleagues to reject this flawed legislation and reaffirm the historical responsibility of state and local governments to manage local land use decisions.

Mr. Speaker, I include for the RECORD two articles on this matter:

[From the Washington Post, March 15, 2000]

PROPERTY RIGHTS AND WRONGS

The House of Representatives is scheduled on Thursday to take up—once again—a piece of legislation designed to bolster commercial developers in their fights with state and local governments. The House passed a similar bill in 1997 that stalled in the Senate. It was a bad idea then—a gross affront to the ability of local governments to regulate private land use—and it's no better now.

The bill attacks state and local power not by changing the substantive rules that govern ''takings''—appropriations of private property by government that require compensation under the Constitution. Rather, it would allow quicker access to the federal courts and change a longstanding doctrine under which those courts are supposed to avoid deciding questions of state law until state courts have a chance. These are profound, if subtle, changes from current law.

The current system, by letting state processes take precedence, encourages negotiation between developers and local authorities. But under this proposal, there would be no incentive for a developer to negotiate. The federal courts could be the first stop.

House conservatives are the self-proclaimed champions of state power, but here they would federalize countless quintessentially local disputes. The bill is opposed not just by environmental groups and the Justice Department also by local governments, many state attorneys general and the federal judiciary—which, among other concerns, does not need the additional workload of local land-use regulation. As Judge Frank Easterbrook of the of the 7th Circuit Court of Appeals wrote in a 1994 opinion. ''Federal courts are not boards of zoning appeals. This message oft-repeated, has not penetrated the consciousness of property owners who believe that federal judges are more hospitable to their claims than are state judges. Why they should believe this we haven't a clue.'' Congress should not encourage the belief that federal courts ought to run local government.

[From the Congress Daily, March 13, 2000]

PROPERTY TAKINGS BILL SET FOR HOUSE FIGHT

(By Brady Mullins)

Supporters and opponents of a controversial property rights bill are bracing for a

clash on the House floor Thursday that could mirror the fight over similar legislation in the 105th Congress.

At issue is legislation designed to speed the resolution of so-called takings cases in which state and local governments are accused of action that reduces the value of private property without compensating the property owner.

The bill would eliminate several hurdles and allow victims to more quickly pursue their cases in federal court. ''The bill simply helps you get your case heard,'' said a GOP leadership source who supports the legislation.

''This bill will be a hammer to the head of these [state and local] bureaucracies,'' declared Jerry Howard, the chief lobbyist for the National Association of Home Builders. ''If they don't deal in a timely manner with the citizens, the citizens could go to federal court.''

But opponents of the legislation believe the bill usurps state authority over zoning issues and could be used as leverage by developers to force the hand of state and local governments in taking cases.

''This bill would severely undermine local zoning processes and represents an unprecedented congressional intrusion into local land use planning,'' Rep. Sherwood Boehlert, R–N.Y., wrote in a Dear Colleague sent Monday.

Boehlert's stance is supported by state and local authorities in groups ranging from the National Conference of State Legislators to the Conference of [State] Chief Justices.

The bill enjoys strong support among members from the South and West, irrespective of party affiliation, while representatives of the East and Midwest generally oppose the legislation.

Similar legislation passed the House in 1997, but died after the Senate failed to approve the measure by a veto-proof margin.

The outlook for the bill is similar this year, though each side claims to be moderately stronger.

''When people take a look at the bill they will realize that it is not all that it is cracked up to be because it undermines local authority over land use,'' according to one bill foe.

Indeed, the measure has fewer cosponsors than it had last Congress and several original cosponsors have dropped off the bill. But in the end, sources expect the bill to pass. The real fight will take place over several amendments and substitutes that legislation's supporters fear could weaken the measure.

The biggest threat appears to come in the form of an amendment championed by Boehlert that would strip the bill of key sections.

Boehlert failed to attach a similar amendment during the 1997 debate, but an aide predicted the amendment would pass this time because ''the history of this bill is that the more people understand it, the less support the bill has.''

House Judiciary ranking member John Conyers, D-Mich., and Reps. Jerrold Nadler, D-N.Y., and Maxine Waters, D-Calif., are expected to offer amendments on the floor as well.

Still, GOP leadership sources predict the bill will pass by a margin similar to the 1997 vote, when the House cleared the measure 248–178.

Ms. PRYCE of Ohio. Mr. Speaker, I am pleased to yield 2½ minutes to my distinguished colleague, the gentleman from New York (Mr. BOEHLERT).

Mr. BOEHLERT. Mr. Speaker, I rise in support of the rule but in strong, strong opposition to the bill.

I want to thank the Committee on Rules for its usual fine work on the rule. The rule allows for a full and fair and open debate in which all sides will have an equal chance to prevail. I wish I could say the same about the bill itself.

The bill takes an opposite approach, however. It is a blatant attempt to limit debate over local, local zoning issues, and to skew zoning proceedings so that one side has all the advantage. This effort to skew zoning proceedings in a way that limits the ability of local communities to determine their own destinies is unfair, it is wrongheaded, and it is unprecedented.

But equally amazing are the means the bill proposes to accomplish its goal of stacking the deck against the general public. First, the bill short-circuits local zoning processes by having Washington, for the first time ever, dictate local zoning procedures. Then this supposedly conservative bill bypasses State courts and eliminates the ability of Federal courts to turn down cases.

In short, the bill turns the principle of Federalism on its head. It is no wonder that this bill is adamantly opposed by the National Association of Counties, the National League of Cities, and 41 State attorneys general, to name just a few.

I will be offering a substitute with the gentleman from Massachusetts (Mr. DELAHUNT) that would remedy these glaring deficiencies. The amendment is identical to one I offered in 1997. The substitute would eliminate the section of H.R. 2372 that intrudes on local prerogatives, but would retain in their 1997 form the sections of the bill that accelerate access to Federal courts in cases against the Federal government.

Congress should be training its sights on Federal actions, not local ones. I urge everyone who opposes this bill to support the Boehlert-Delahunt amendment, because it will eliminate the primary failing of H.R. 2372, its unprecedented interference with local zoning processes.

I urge everyone who has qualms about the bill but still plans to vote for final passage to support the amendment, because it will allay their concerns.

Mr. FROST. Mr. Speaker, I yield 5 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the gentleman from Texas for yielding time to me.

Mr. Speaker, I rise today in opposition to this rule and to the bill. I appreciate the efforts that will be made by the previous speaker to help us cure some of the many ailments of this particular legislation. But I think the rule that we are addressing today will shortchange any debate that will help us understand the devastating impact of this legislation.

This legislation would undermine and preempt the traditional and historic rights and responsibilities of State and local governments and would mandate significant new unfunded costs for all State and local taxpayers. There lies the reason for the adamant opposition of the National League of Cities, of which I am a former member.

When we in local government attempt to make beautiful, if you will, places where our citizens live, it is extremely, if you will, cumbersome for the Federal government to interfere in that process. Put simply, it would create special rights for wealthy developers. In essence, we are talking about giving special priority to takings claims at the expense, for example, of civil rights complaints in the Federal courts.

The legislation unwisely and unconstitutionally attempts to allow takings claims against localities to bypass State courts and file directly in Federal court. When we attempted to raise up civil rights matters equal to this particular legislation, it was rejected and denied in committee. Meanwhile, local elected officials continue to dedicate themselves to improving the livability of their communities through the equitable balancing of private property rights with the rights of the community at large.

Zoning is an example. I believe that local governments adopt ordinances or approve building permits in good faith, not for the purpose of infringing on property rights, but to protect the property rights of all. Here lie the failings of this particular legislation. It will not protect the property rights of all.

Mr. Speaker, this bill will result in more frequent and more expensive litigation against local governments. The bill is clearly an invitation for developers to sue communities early and often.

□ 1100

In addition, the bill would force counties and cities to defend their challenges in distant and more expensive Federal courts. With that in mind, I would ask my fellow Americans to imagine the enormous financial burdens on some of our communities, which would be squandered because every day the local cities and townships would be facing large lawsuits in the Federal courts. Why would we want to do that? Why, in this Congress that talks about the rights of those outside the beltway, are we looking to pass this legislation?

Consider, for example, that there are 40,000 cities and towns in the United States, most of which have small populations, few professional staff and minuscule budgets. Ninety-seven percent of the cities and towns in America have populations less than 10,000. Virtually without exception counties, cities, and

communities are forced to hire outside legal counsel each time they are sued, imposing overwhelming expenses.

Despite these facts, the rule for this bill would not permit a fair process for serious concerns to be addressed. I am disappointed that the Committee on Rules did not allow the amendment that I offered, which is an amendment supported by the Supreme Court, in a case ruled in 1999, which simply said that if a State has in process or has in place a proceeding to deal with these property issues, the case should go to the State courts first before dollars are expended and resources wasted by the Federal Court system and litigants heavily burdened.

Mr. Speaker, what a simple proposition. And yet this amendment was not accepted, even in light of the Supreme Court pronunciation that first property owners must demonstrate that the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue; and, as well, the 1999 Delmontes case held that the constitution requires that takings claims against localities must seek compensation in the State court.

I am very concerned, Mr. Speaker, that, in fact, we have a rule that does not allow the extensive debate on this bill that is needed; that those voices of localities will not be heard. And I will be very interested in the amendment that will be offered by the gentleman from New York, because I am looking for ways that this bill might be made better.

But the real problem is that this bill is even on the floor of the House, because it does damage to the constitutional premise of dealing with the protection of all of our property rights and not giving those who have a larger hand and larger access to money the higher hand in proceeding in litigation.

I am concerned that this rule does not answer all of our questions; that it would allow industry and developers to bypass local public health and land protections, and would make it easier to overcome a community's objection to toxic waste dumps or incinerators or sprawl.

This bill will add new and completely unnecessary burdens to the already overloaded Federal Court system. Therefore, the passage of this rule would seriously erode important, indeed, essential, environmental protections that we take for granted. I oppose the rule and I likewise oppose the bill. I wish we did not have to address this today.

Ms. PRYCE of Ohio. Mr. Speaker, I yield 3 minutes to the gentleman from Florida (Mr. CANADY), Chairman of the Subcommittee on the Constitution.

Mr. CANADY of Florida. Mr. Speaker, I thank the gentlewoman for yielding me this time, and I rise in support of the rule.

I want to join my friend, the gentleman from New York (Mr. BOEHLERT), in supporting the rule. I must, however, disagree with his opposition to this bill, which is an important piece of legislation designed to bring a greater measure of fairness to the administration of justice in this country.

There is a real problem that this bill seeks to address, a problem in which private property owners are denied meaningful access to the Federal courts when they have suffered a violation of their constitutional rights. It is important to understand that this bill does not deal with the run-of-the-mill zoning case. This bill deals with those extreme cases in which a local government decision or a decision by the Federal Government is made which deprives the landowner of all economically viable uses of the land. When the landowner is deprived of all beneficial uses of the land, then this bill comes into play. So it is important to understand that.

Now, why should a landowner who has suffered that constitutional deprivation not be allowed to go to Federal Court? There is no good answer.

It is important to also understand that the general rule for civil rights cases that are brought against local governments was articulated by the Supreme Court in a case called Monroe vs. Pape, in 1961, and this has been reaffirmed time after time after time by the Supreme Court. The Supreme Court there addressed the law under which these civil rights claims are brought against local governments at section 1983 of the U.S. Code, Title 42. In that Supreme Court case, the court said the Federal remedy under section 1983 is supplementary to the State remedy, and the latter need not be first sought and refused before the Federal one is invoked.

So the rule is, that applies to civil rights cases in general, that there need not be exhaustion of State administrative or judicial remedies, that is what the law is, except when it comes to takings claims in the Federal courts. I am simply suggesting that is not fair.

Now, it is also important to understand that this bill does not shortcircuit the local process. The bill shows substantial deference to the local process. After the landowner is first given a refusal, the landowner must appeal to the local planning commission, must make application for a waiver to the local zoning board, and must appeal to the local board of elected officials. In addition, if the landowner is initially turned down, is given an explanation of what uses could be made of the property, the landowner has to reapply and go through the process.

This is not shortcircuiting the process. It is simply saying when, at the end of the day, after the landowner has gone through all those local options that are available, and the message comes back from the local government that they are going to do something as a local government that takes that property, that owner has a right to get to Federal Court without further delay.

Mr. FROST. Mr. Speaker, I urge adoption of the rule.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Ms. PRYCE of Ohio. Mr. Speaker, I yield myself such time as I may consume.

In closing, let me remind my colleagues that this rule that we are considering is a fair rule. The House will have the opportunity to debate the major points of contention surrounding the private property rights legislation. The Committee on Rules has made in order two Democrat amendments as well as a bipartisan substitute which will be debatable for 1 hour.

Under the rule, questions of how this bill affects local decision-making and authority, how property owners' constitutional rights are treated as compared to other civil rights, and how we can ensure our citizens have the opportunity to see a timely resolution of their constitutional claims, all these things, will be discussed at length. Then, with the benefit of this debate, the House may work its will.

These are weighty questions, and the rule respects the disparate views of the Members of the House by providing for a full debate. I urge all my colleagues to support this fair rule so that we may move forward with today's debate and act to ensure that our citizens have access to their courts and the opportunity to fully exercise the constitutional rights that we each fight to uphold every day.

Mr. GOSS. Mr. Speaker, I rise in support of this rule. It is a balanced rule that provides an opportunity for the House to debate the main controversies surrounding H.R. 2372.

However, I do have some concerns about the bill itself. First, I want to applaud my colleague from Florida, along with Chairman HYDE and the other members of the Judiciary Committee for attempting to address the property rights issue. I have been involved in this subject for a very long time, going back to my service as a city councilman, mayor and county commissioner. This is a tough issue. It involves the need to balance protection of constitutionally guaranteed private property rights with other constitutional guarantees of public health, safety and welfare as traditional, legitimate functions of government. I will be the first to say that it is an imperfect system, there is no question about that. While our system of layering government and dividing authority isn't perfect, I believe it works well reasonably and ensures a balanced role for all three levels of government. We ought to trust the local officials to work through the zoning issues. They're the ones on the front lines—they deal with these questions every day and are in the best position to be directly responsive to the needs and concerns of the community. Of

course, there are poster child examples of the extreme and cases of egregious takings without compensation.

If there are questions of State law that need to be resolved, we need State courts to decide those issues. If a legitimate takings claim exists, it is critical we ensure landowners their day in court in a timely manner.

We need to maintain for local officials a meaningful opportunity to work with the landowners to craft a compromise. In my view, it is not appropriate to have the Federal Government deciding local land use questions. In addition, some critics of this bill have argued that the Federal judiciary would be flooded with claims and simply could not handle the caseload that would result if this bill were enacted. For example, the Federal District Court for Southwest Florida, which I represent, is already short-handed and has a backlog of cases that is measured in years, not just months. Any changes to the current system must take these concerns into account.

In the end, balancing the right of a landowner to develop his property within the bounds set by the health, safety and welfare interests of the community is a difficult question—I, for one, do not believe there's any particular magic a Federal court has that can solve these problems and make them go away.

So, I will reluctantly oppose H.R. 2372. I do however, want to make mention of the fact that there are several provisions of the bill dealing with Federal takings that I do support. This is why I intend to support the amendment offered by Representative BOEHLERT, which would remove the provisions dealing with local governments but retain the sections dealing with Federal takings. Once again, I urge my colleagues to support this rule. It is a fair rule and we should pass it so the House can have an open debate about H.R. 2374.

Ms. PRYCE of Ohio. Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. PEASE). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. PRYCE of Ohio. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore (Mr. PEASE). Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 276, nays 145, not voting 13, as follows:

[Roll No. 51]

YEAS—276

Aderholt	Baker	Barrett (NE)
Archer	Baldacci	Bartlett
Armey	Ballenger	Barton
Baca	Barcia	Bass
Bachus	Barr	Bateman
Bereuter	Gutknecht	Pickett
Berkley	Hansen	Pitts
Berry	Hastings (WA)	Pombo
Biggert	Hayes	Pomeroy
Bilbray	Hayworth	Porter
Bilirakis	Hefley	Portman
Bishop	Herger	Pryce (OH)
Bliley	Hill (IN)	Quinn
Blunt	Hill (MT)	Radanovich
Boehlert	Hilleary	Ramstad
Boehner	Hilliard	Regula
Bonilla	Hinchey	Reyes
Bono	Hobson	Reynolds
Boswell	Hoekstra	Riley
Boyd	Holden	Rodriguez
Brady (TX)	Horn	Roemer
Brown (FL)	Hostettler	Rogan
Bryant	Houghton	Rogers
Burr	Hulshof	Rohrabacher
Burton	Hunter	Ros-Lehtinen
Buyer	Hutchinson	Rothman
Callahan	Hyde	Roukema
Calvert	Isakson	Royce
Camp	Istook	Ryan (WI)
Campbell	Jenkins	Ryun (KS)
Canady	John	Salmon
Cannon	Johnson (CT)	Sandlin
Chabot	Johnson, Sam	Sanford
Chambliss	Kasich	Saxton
Chenoweth-Hage	Kelly	Scarborough
Clement	King (NY)	Schaffer
Coble	Kingston	Sensenbrenner
Coburn	Knollenberg	Sessions
Collins	Kolbe	Shadegg
Combest	Kuykendall	Shaw
Condit	LaHood	Shays
Cooksey	Lampson	Sherwood
Costello	Largent	Shimkus
Cox	Latham	Shows
Cramer	LaTourette	Shuster
Cubin	Lazio	Simpson
Cunningham	Leach	Sisisky
Danner	Lewis (CA)	Skeen
Davis (FL)	Lewis (KY)	Skelton
Davis (VA)	Linder	Smith (MI)
Deal	Lipinski	Smith (NJ)
DeMint	LoBiondo	Smith (TX)
Diaz-Balart	Lucas (KY)	Souder
Dickey	Lucas (OK)	Spence
Dooley	Maloney (NY)	Stearns
Doolittle	Manzullo	Stenholm
Doyle	Martinez	Stump
Dreier	Mascara	Stupak
Duncan	McCollum	Sununu
Dunn	McCrery	Sweeney
Edwards	McHugh	Talent
Ehlers	McInnis	Tancredo
Ehrlich	McIntosh	Tanner
Emerson	McIntyre	Tauzin
English	McKeon	Taylor (MS)
Etheridge	Metcalf	Taylor (NC)
Everett	Mica	Terry
Ewing	Miller (FL)	Thomas
Fletcher	Miller, Gary	Thompson (CA)
Foley	Minge	Thornberry
Ford	Moran (KS)	Thune
Fossella	Moran (VA)	Thurman
Fowler	Morella	Tiahrt
Franks (NJ)	Murtha	Toomey
Frelinghuysen	Napolitano	Traficant
Frost	Nethercutt	Turner
Gallegly	Ney	Upton
Ganske	Northup	Vitter
Gekas	Norwood	Walden
Gibbons	Nussle	Walsh
Gilchrest	Obey	Wamp
Gillmor	Ortiz	Watkins
Gilman	Ose	Watts (OK)
Goode	Oxley	Weldon (FL)
Goodlatte	Packard	Weldon (PA)
Goodling	Pascrell	Weller
Gordon	Paul	Weygand
Goss	Pease	Wicker
Graham	Peterson (PA)	Wilson
Granger	Petri	Wolf
Green (WI)	Phelps	Young (AK)
Greenwood	Pickering	Young (FL)

NAYS—145

Abercrombie	Barrett (WI)	Bonior
Ackerman	Becerra	Borski
Allen	Bentsen	Boucher
Andrews	Berman	Brady (PA)
Baird	Blagojevich	Brown (OH)
Baldwin	Blumenauer	Capps
Capuano	Jackson-Lee (TX)	Neal
Cardin	Jefferson	Oberstar
Carson	Johnson, E. B.	Olver
Castle	Jones (OH)	Pallone
Clay	Kanjorski	Pastor
Clayton	Kaptur	Payne
Clyburn	Kennedy	Pelosi
Conyers	Kildee	Peterson (MN)
Coyne	Kilpatrick	Price (NC)
Crowley	Kind (WI)	Rahall
Cummings	Kleczka	Rivers
Davis (IL)	Kucinich	Roybal-Allard
DeFazio	LaFalce	Sabo
DeGette	Lantos	Sanchez
Delahunt	Larson	Sanders
DeLauro	Lee	Sawyer
Deutsch	Levin	Schakowsky
Dicks	Lewis (GA)	Scott
Dingell	Lofgren	Serrano
Dixon	Lowey	Sherman
Doggett	Luther	Slaughter
Engel	Maloney (CT)	Smith (WA)
Eshoo	Markey	Snyder
Evans	Matsui	Spratt
Farr	McCarthy (MO)	Stabenow
Fattah	McCarthy (NY)	Strickland
Filner	McDermott	Tauscher
Forbes	McGovern	Thompson (MS)
Frank (MA)	McKinney	Tierney
Gejdenson	McNulty	Towns
Gephardt	Meehan	Udall (CO)
Gonzalez	Meek (FL)	Udall (NM)
Green (TX)	Meeks (NY)	Velázquez
Gutierrez	Menendez	Vento
Hall (OH)	Millender-McDonald	Visclosky
Hall (TX)	Miller, George	Waters
Hastings (FL)	Mink	Watt (NC)
Hoeffel	Moakley	Weiner
Holt	Mollohan	Wexler
Hooley	Moore	Wise
Hoyer	Nadler	Woolsey
Inslee		Wu
Jackson (IL)		Wynn

NOT VOTING—13

Cook	Klink	Stark
Crane	Myrick	Waxman
DeLay	Owens	Whitfield
Hinojosa	Rangel	
Jones (NC)	Rush	

□ 1132

Messrs. GREEN of Texas, LARSON, GEPHARDT, GEORGE MILLER of California, HASTINGS of Florida, JEFFERSON, Ms. SANCHEZ, Ms. DEGETTE, and Ms. SLAUGHTER changed their from ''yea'' to ''nay.''

Mr. DOOLITTLE changed his vote from ''nay'' to ''yea.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

RECESS

The SPEAKER pro tempore (Mr. PEASE). Pursuant to clause 12 of rule I, the Chair declares the House in recess until approximately 2 p.m.

Accordingly (at 11 o'clock and 32 minutes a.m.), the House stood in recess until approximately 2 p.m.)

□ 1400

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. MCHUGH) at 2 p.m.

GENERAL LEAVE

Mr. CANADY of Florida. Mr. Speaker, I ask unanimous consent that all